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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 SCOTT FRANKLIN,

11 Petitioner,

12 v.

13 SNOHOMISH COUNTY SUPERIOR
14 COURT

15 Respondent.

Case No. C11-586-JCC-JPD

REPORT AND
RECOMMENDATION

17 *Pro se* petitioner Scott Franklin applies to proceed *in forma pauperis* (Dkt. 8) with a
18 proposed 28 U.S.C. § 2254 habeas petition (Dkt. 1-1). The Court recommends DISMISSING
19 the habeas petition without prejudice because petitioner has failed to exhaust state-court
20 remedies on the challenged criminal judgment and sentence of May 13, 2011. The Court also
21 recommends DENYING the issuance of a certificate of appealability and DENYING as moot
22 his application to proceed IFP (Dkt. 8) and motion for an extension of time to correct IFP
23 deficiencies (Dkt. 6).

24 **I. DISCUSSION**

25 The exhaustion of state judicial remedies is ordinarily a prerequisite to obtaining
26 federal habeas corpus relief. 28 U.S.C. § 2254(b); *Picard v. Connor*, 404 U.S. 270, 275

1 (1971). A petitioner can satisfy exhaustion by either (1) fairly presenting each federal claim to
2 the highest state court with jurisdiction to consider it, or (2) showing that no state remedy is
3 available. *See Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). “[S]tate prisoners must
4 give the state courts one full opportunity to resolve any constitutional issues by invoking one
5 complete round of the State’s established appellate review process.” *O’Sullivan v. Boerckel*,
6 526 U.S. 838, 845 (1999).

7 On April 7, 2011, petitioner filed this proposed § 2254 habeas petition to challenge a
8 May 13, 2011, judgment and sentence by guilty plea in Snohomish County Superior Court.
9 *See State v. Franklin*, No. 10-1-02182-0 (Snohomish Cnty. Super. Ct., entry dated May 13,
10 2011), located at <http://dw.courts.wa.gov/> (last accessed on June 6, 2011). Although there is
11 no indication about whether petitioner intends to appeal or has appealed his conviction, it is
12 clear that he has yet to afford the state courts one full opportunity to resolve his federal
13 constitutional claims.

14 Petitioner’s § 2254 habeas petition should be dismissed without prejudice for failure to
15 exhaust state-court remedies. Petitioner should be denied the issuance of a certificate of
16 appealability because no reasonable jurist would disagree with this conclusion. His IFP
17 application and motion to extend time to correct IFP deficiencies are moot.

18 **II. CONCLUSION**

19 The Court recommends DISMISSING the 28 U.S.C. § 2254 habeas petition without
20 prejudice because petitioner has failed to exhaust state-court remedies on the challenged
21 judgment and sentence of May 13, 2011. The Court also recommends DENYING the issuance

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1 of a certificate of appealability and DENYING as moot his application to proceed IFP (Dkt. 8)
2 and motion for an extension of time to correct IFP deficiencies (Dkt. 6).

3 DATED this 9th day of June, 2011.

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6 JAMES P. DONOHUE
7 United States Magistrate Judge
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